



U.S. Department of Justice

Environment and Natural Resources Division

90-1-18-15604/1

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April 16, 2020

Via ECF

Honorable Richard M. Gergel
U.S. District Court for the District of South Carolina
85 Broad Street
Charleston, South Carolina 29401

Re: South Carolina Coastal Conservation League, et al. v. Ross, et al.;
Case No. 18-cv-3326-RMG;
City of Beaufort; et al., v. Nat'l Marine Fisheries Serv., et al.,
Case No. 18-cv-03327-RMG (consolidated)

Dear Judge Gergel:

Federal Defendants filed a Motion for Entry of a Rule 502(d) Order on March 9, 2020. ECF 362. Plaintiffs filed their opposition to the motion on March 12 and March 16, 2020. ECF 364, 366. On March 16, 2020, the Court entered a Text Order, directing the parties to promptly consult by telephone regarding recent developments with COVID-19 and determine if a mutually satisfactory resolution might be reached. ECF 365. The Court also stated that it was “not inclined to grant the F.R.E. 502(D) motion but may consider a brief extension if the Federal Defendants commit to provide greater resources (more than two attorneys) to conduct its review. Any supplemental motion by the Federal Defendants must specify the additional resources it will assign to the review and an estimate of the number of documents under review.” *Id.*

On March 19, 2020, Federal Defendants filed their Report on Court-Ordered Consultation with the Parties and Reply in Support of Motion for Entry of a Rule 502(d) Order (ECF 368), which included a declaration from Adam Issenberg of the National Oceanic and Atmospheric Administration’s Office of the General Counsel. Mr. Issenberg’s declaration provided a response to the Court’s inquiry as to the additional resources assigned to the review and an estimate of the number of documents under review. ECF 368-2. Federal Defendants, through their counsel, are writing to correct the information set forth in Mr. Issenberg’s declaration. As set forth in the attached declaration, as Federal Defendants near the completion of their work on the court-ordered supplement to the administrative record, they have recently determined that the information in Mr. Issenberg’s declaration regarding the number of documents under review was in error. The accompanying declaration from NOAA Attorney-Advisor, Scott Farley, explains this mistake, which was made in good faith, and provides a revised estimate of the items collected for the court-ordered supplemental administrative record. As further detailed in the accompanying declaration, the error resulted from the fact that the number of documents stated in Mr. Issenberg’s declaration inadvertently included documents

that had been collected in June and July 2019 as part of the second and third supplements to the administrative record and the documents described in Federal Defendants' Status Report dated July 17, 2019 (ECF 335), which were provided to Plaintiffs on July 24, 2019. The Departments of Justice and Commerce sincerely apologize for this mistake.

In advance of the filing of this letter, undersigned counsel for Federal Defendants communicated the updated information to counsel for Plaintiffs, Gabe Daly and Catherine Wannamaker, so that they can plan accordingly.

Respectfully,

/s/ Alison C. Finnegan

Alison C. Finnegan
Counsel for Federal Defendants

/s/ Marissa A. Piropato

Marissa A. Piropato
Counsel for Federal Defendants

Attachment